

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

CHRISTINE A. DAVIS,

Plaintiff,

v.

**Civil No. 1:04-CV-1005
(GLS/RFT)**

ABERCROMBIE & FITCH CO. et al,

Defendants.

APPEARANCES:

OF COUNSEL:

FOR PLAINTIFF:

Office of Peter A. Tulin
340 Broadway
Saratoga Springs, NY 12866

PETER A. TULIN, ESQ.

FOR DEFENDANTS:

Whiteman, Osterman Law Firm
One Commerce Plaza
Albany, NY 12260

HEATHER D. DIDDEL, ESQ.

**Gary L. Sharpe
U.S. District Judge**

Decision and Order

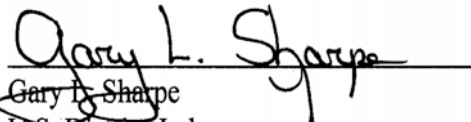
Defendants filed a motion to dismiss and/or in the alternative for sanctions pursuant to Federal Rule of Civil Procedure 37 based upon Davis' failure to comply with Judge Treece's discovery order. Davis did not

oppose the motion. On November 23, 2005, Judge Treece issued a report recommending that defendants motion be granted and the entire action dismissed. See *Report-Recommendation p. 13, Dkt. No. 28*. By statute, federal rule and Local Rule, Davis had ten days from receipt of the report to file specific, written objections to the proposed findings and recommendations. See *Almonte v. New York State Division of Parole*, 9:04-CV-484, 2006 WL 149049, *2 (N.D.N.Y. Jan. 18, 2006). “While the statute does not require the judge to review an issue *de novo* if no objections are filed, it does not preclude further review, *sua sponte* or at the request of a party under a *de novo* or any other standard. *Id.* at *6 (citing *Thomas v. Arn*, 474 U.S. 140, 154 (1985)).

Davis did not file an objection. Having failed to file any objections, she has procedurally defaulted. See *Almonte*, 2006 WL 149049, at *3. Accordingly, this court will apply a “clearly erroneous” standard and having noted no clear error in Judge Treece’s recommendation, it is adopted in its entirety. See *Almonte*, 2006 WL 149049, at *6.

SO ORDERED.

Date: February 6, 2006
Albany, New York


Gary L. Sharpe
U.S. District Judge